

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1498 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO
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SHAH MOTILAL MOHANLAL

Versus

NAGARMAL BNURMAL

Appearance:

MR JR NANAVATI for Petitioner
Ms Maya Desai for Mr MD PANDYA for Respondent No. 1
MR JR NANAVATI for Respondent No. 2

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 24/11/2000

ORAL JUDGEMENT

This is plaintiff's first appeal u/s 96 of the
Civil Procedure Code directed against the judgement and
decree dated 30.6.1980 passed by the Civil Judge (S.D.),

Vadodara, in Civil Suit NO.242 of 1972 whereby the plaintiff's suit for recovery of Rs.14,774 with running interest at the rate of 6% from the date of suit till realisation and notice charges was dismissed with costs.

2 The plaintiff filed the aforesaid suit claiming that both the defendants named in exh.1 had executed a promissory note exh.45 for Rs.12,500/- in favour of the plaintiff on 1.12.1968 and the defendants had agreed to make the payment of the suit promissory note to the plaintiff as and when and at the place demanded by the plaintiff and that both the defendants had signed the suit promissory note on the revenue stamp tickets. The plaintiff came with a case that nothing had been recovered from the defendants and that in spite of many demands made by the plaintiffs neither suit pro note amount nor the interest was paid and in fact the defendants did not respond and evaded the payment. Thereupon after giving notice dated 12.9.1971 through advocate, to which a false reply was given, the suit was filed. The defendants denied the plaintiff's claim and opposed the plaintiff's suit on several grounds and came with a case that they had not executed alleged pro note and had not put up their signatures on the said pro note. Their case was of total denial. On the basis of the pleadings of the parties, the following issues were framed by the trial Court for which the findings were recorded as mentioned against each of these issues as under:-

ISSUES FINDING

1. Whether the plaintiff proves that -- No --
both the defendants have executed a
suit Promissory Note is without
consideration?
2. If yes, whether the defendants -Does not
proves that the said promissory survive -
note is without consideration?
3. Whether the defendants prove As stated below
that the alleged signature of
defendant no.2 in the suit promissory
note has been subsequently transcribed?
If so, what is its effect?
4. Whether the defendants prove that -do-
the plaintiff used to obtain their
signatures on balank papers as
alleged in para (8) of written

statement?

5. Whether plaintiff is entitled to - No -
claim interest? How much?
6. What is found due to the Plaintiff? -Nothing-
7. Whether the suit is mala fide, false, -As stated
frivolous and vexatious? Are the below-
defendants entitled to special
costs? How much?
8. What order and decree? As per the
final order"

3 I have heard Mr J.R. Nanavati for the appellant.
I have gone through the impugned judgement and the available record.

4 It is very clear on consideration of the evidence in this case that the plaintiff has failed to prove that the defendants had executed the suit promissory notes in question for a sum of Rs.12,500/- on 1.12.1968. It is found that the plaintiff had failed to prove that the alleged signatures on Exh.45 were that of defendants and that the defendants had executed Exh.45 on 1.12.1968. The signatures of defendant no.1 materially differs from his admitted and standard signatures at exh.11 as compared with exh.45. Exh.61, 62, 66 and 45 and they all appear to be forged writings but they are only alike but different from exh.11 which is a standard writing. It has come in the evidence of the plaintiff himself that defendants nos.1 and 2 were doing the business and naturally there are number of persons who may be acquainted with the hand-writing of the defendants. Yet, not a single person was examined by the plaintiff to prove that the signatures on exh.45 were that of the present defendants. Both the defendants in their respective evidence at exh.106 and exh.118 had categorically denied their signatures on exh.45. The trial Court has correctly held that the plaintiff had failed to prove that the defendants had executed the suit pro notes exh.45.

5 This Court finds that the findings recorded by the trial Court are based on evidence and are duly supported by reasons, do not suffer from any illegally so as to warrant any interference by this Court. Once the plaintiff failed to prove the pro notes the whole edifice of the case of the plaintiff fails. On consideration of the evidence oral as well as documentary as also the

evidence of handwriting expert and whereas no other evidence has been led to prove the signatures of the defendants nos.1 and 2 on exh.45 and that the handwriting expert had no scientific training, this Court does not find it safe to believe the plaintiff's case. The plaintiff has failed to discharge his burden so as to prove his case.

6 This Court does not find any merit in this appeal. The same is hereby dismissed with no order as to costs.

(M R Calla J.)

(mohd)